

2007 DRAFTING REQUEST

Bill

Received: **08/14/2007**

Received By: **tkuczens**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing: **Mark Anderson**

This file may be shown to any legislator: **NO**

Drafter: **tkuczens**

May Contact:

Addl. Drafters:

Subject: **Occupational Reg. - prof lic**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Plale@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Registration requirements for certain cemeteries

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tkuczens 08/21/2007	wjackson 09/04/2007		_____			
/1			pgreensl 09/04/2007	_____	lparisi 09/04/2007	cduerst 10/01/2007	

FE Sent For:

N/A

<END>

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/?	tkuczens	11 WJ 9/4					
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FE Sent For:

<END>

Grant, Peter

From: Anderson, Mark
Sent: Thursday, August 02, 2007 3:03 PM
To: Grant, Peter
Subject: Cemetery Registration Bill Draft instructions
Attachments: Changes to LRB 1488-3 (cemetery registration bill).doc; 07-14883 - cemetery registration.pdf

Peter,

Please re-draft LRB-1488/3 with the additional language. If you have any questions, please give me a call. Thanks.

Attachments :

- LRB-1488/3, which is the original draft of the cemetery registration bill that was drafted last session .
- Additional language that we would like to have included in the cemetery registration draft (LRB-1488/3).

Mark Anderson
Office of Senator Jeff Plale
7th Senate District
Tel (608) 266-7505 or (800) 361-5487
Fax (608) 266-7483
313 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

8/13/07 per. Mike Welsh, WI Cemeteries Assn. * 310-8833
Create a new LRB # w/ Sen. Plale as requester.

Changes to LRB 1488/3

✓ 440.92 (10)

(10) Exemptions; certain nonprofit cemeteries. This section does not apply to a cemetery authority that is not required to be licensed under and that is not organized or conducted for pecuniary profit **or registered under s. 440.91 (1m).**

✓ 157.062 (9)

In lieu of delivering a certification, resolution or copy of proceedings to the department of financial institutions under sub. (1), (2) or (6) (b), a cemetery association that is not required to be registered licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit **or registered under s. 440.91 (1m)** shall deliver the certification, resolution or copy of proceedings to the office of the register of deeds of the county in which the cemetery is located.

✓ 157.19(5)(a)

(a) This section does not apply to care funds under s. 157.11 (9g) that are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds of a cemetery for which a certification under s. 157.63 is effective, to preneed trust funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care funds or preneed trust funds of a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit **or registered under s. 440.91 (1m).**

✓ 157.625(3)

(3) Section 157.62 does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary profit **or registered under s. 440.91 (1m).**

stays

RMNR

insert

2007 BILL

in 8/21/07

Today
please

regen

- 1 AN ACT *to amend* 157.062 (9), 157.08 (5), 157.11 (9g) (a) 1. c., 157.19 (2) (b) to (d),
 2 157.19 (4) (intro.), 157.19 (5) (b), 157.62 (2) (a) and (c), 440.91 (1) (a), 440.91 (1)
 3 (c), 440.91 (6m), 440.92 (2) (a) 4. a. and 440.92 (7); and *to create* 440.08 (2) (a)
 4 21m. and 440.91 (1m) of the statutes; **relating to:** regulation of and
 5 registration requirements for certain cemetery authorities

cemetery associations
and cemetery
merchandise**Analysis by the Legislative Reference Bureau**

Under current law, a cemetery authority may not change the trustee of a care fund or a preneed trust fund without written approval from the Department of Regulation and Licensing (DRL). DRL must establish rules governing approval of a change of a trustee. DRL must also oversee the management of care funds held by a cemetery authority and approve the investment of certain funds. This bill transfers these responsibilities from DRL to the Cemetery Board (board).

Under current law, a cemetery authority must submit an annual report to DRL. This bill requires a cemetery authority to provide a copy of the annual report to the board instead.

Under current law, with limited exceptions, any cemetery authority that operates a cemetery that is five acres or more in size, that sells 20 or more cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has \$100,000 or more in preneed trust fund accounts for a cemetery must be licensed by the board. Cemetery authorities that are operated by a municipality; church; religious, fraternal, or benevolent organization; or incorporated college of a religious order are not required to be licensed.

Insert analysis 1

Licensure and
Registration
of certain
Cemeteries

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This bill requires any cemetery authority having \$100,000 or more in any trust fund accounts, rather than just preneed trust fund accounts, to be licensed by the board. This bill also requires any cemetery authority that operates a cemetery that is less than five acres in size, that sells fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar year, or that has less than \$100,000 in trust fund accounts for a cemetery to register that cemetery with the board. Cemetery authorities that are operated by a municipality; church; religious, fraternal, or benevolent organization; or incorporated college of a religious order are not required to register with the board.

Under current law, before a cemetery authority may sell or encumber cemetery land, the cemetery authority must notify the board in writing of the proposed sale. The board has 60 days to object to the sale or encumbrance if the board determines that the cemetery authority will not be financially solvent or that the rights and interests of the cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. Current law provides an exemption from the notification requirement for a cemetery authority that is not required to be licensed and that is not organized or conducted for pecuniary profit. This bill exempts from the notification requirement a cemetery authority that is not required to be registered. This bill also eliminates the requirement that a cemetery authority may not be organized or conducted for pecuniary profit in order to be exempt from the notification requirement.

Under current law, DRL regulates warehouses; a warehouse is defined as a place of storage for cemetery merchandise sold under a preneed sales contract. Persons wishing to own or operate a warehouse must seek approval from DRL. A preneed seller who sells cemetery merchandise stored in a warehouse not located on the property of the preneed seller must provide the purchaser of a preneed sales contract with the name, address, and telephone number of the warehouse and inform the purchaser that the warehouse is approved by DRL. This bill transfers the regulation of warehouses to the board and requires a preneed seller who sells cemetery merchandise stored in a warehouse not located on the property of the preneed seller to inform the purchaser that the warehouse is approved by the board.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 157.062 (9) of the statutes is amended to read:

157.062 (9) EXEMPTIONS FOR CERTAIN ~~NONPROFIT~~ CEMETERIES. In lieu of delivering a certification, resolution or copy of proceedings to the department of financial institutions under sub. (1), (2) or (6) (b), a cemetery association that is not required to be registered licensed under s. 440.91 (1) ~~and that is not organized or~~

BILL

① ~~conducted for pecuniary profit~~ ^{or registered under s. 440.91 (1m) ✓} shall deliver the certification, resolution or copy of
2 proceedings to the office of the register of deeds of the county in which the cemetery
3 is located.

4 **SECTION 2.** 157.08 (5) of the statutes is amended to read:

5 157.08 (5) Subsections (1) and (2) (b) do not apply to a religious society
6 organized under ch. 187, and sub. (2) (b) does not apply to a cemetery authority that
7 is not required to be licensed under s. 440.91 (1) ~~and that is not organized or~~
8 ~~conducted for pecuniary profit~~ or registered under s. 440.91 (1m).

9 **SECTION 3.** 157.11 (9g) (a) 1. c. of the statutes is amended to read:

10 157.11 (9g) (a) 1. c. If not invested as provided in subd. 1. a. or b., otherwise
11 deposited by the cemetery authority in an investment approved by the department
12 cemetery board if the care funds are segregated and invested separately from all
13 other moneys held by the cemetery authority.

14 **SECTION 4.** 157.19 (2) (b) to (d) of the statutes are amended to read:

15 157.19 (2) (b) The cemetery authority may not change the trustee of a care fund
16 under s. 157.11 (9g) that is deposited under this section or of a care fund under s.
17 157.12 (3), and the financial institution may not release any portion of the principal
18 amount of the care fund, without the department's cemetery board's written
19 approval.

20 (c) Upon request of the financial institution, the preneed seller, as defined in
21 s. 440.90 (8), shall furnish the financial institution with a copy of the preneed sales
22 contract. Except as provided in s. 440.92 (2) (c), (f) and (j) and (5), preneed trust
23 funds, and any interest or dividends that have accumulated on the preneed trust
24 funds, may not be withdrawn until all obligations under the preneed sales contract
25 have been fulfilled. The financial institution is not responsible for the fulfillment of

BILL

1 any part of the preneed sales contract, except that the financial institution shall
2 release the preneed trust funds, and any interest or dividends that have
3 accumulated on the preneed trust funds, as provided by the terms of the preneed
4 sales contract. The trustee of a preneed trust fund may not be changed without the
5 department's cemetery board's written approval. If the trustee or account number
6 of a preneed trust fund is changed, the cemetery authority shall notify the
7 department cemetery board in writing within 30 days after the change.

8 (d) The department cemetery board shall promulgate rules establishing
9 reasonable requirements and standards for the approval of changes under pars. (b)
10 and (c). For approval of changes under par. (b), the rules shall require the cemetery
11 authority to submit evidence that the rights and interests of the beneficiary of the
12 care fund will be adequately protected if the change is approved. For approval of
13 changes under par. (c), the rules shall require the trustee to submit evidence that the
14 rights and interests of the purchaser under the preneed sales contract will be
15 adequately protected if the change is approved.

16 SECTION 5. 157.19 (4) (intro.) of the statutes is amended to read:

17 157.19 (4) (intro.) The department cemetery board may promulgate rules
18 allowing funds invested under this section to be deposited with a financial institution
19 located outside this state.

20 SECTION 6. 157.19 (5) (b) of the statutes is amended to read:

21 157.19 (5) (b) If the department cemetery board determines that care funds
22 under s. 157.11 (9g) that have not been deposited with a city or county as provided
23 in s. 157.11 (9g) (a) are not being properly segregated from other moneys held by the
24 cemetery authority or that those care funds are not being properly invested as
25 required in s. 157.11 (9g) (a), the department cemetery board may require the

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BILL

1 cemetery authority to deposit those care funds with a financial institution for
2 investment under this section.

3 **SECTION 7.** 157.62 (2) (a) and (c) of the statutes are amended to read:

4 157.62 (2) (a) Except as provided in ss. 157.625 and 157.63 (1), every cemetery
5 authority shall file an annual report with the department cemetery board. The
6 report shall be made on a form prescribed and furnished by the department cemetery
7 board. The report shall be made on a calendar-year basis unless the department
8 cemetery board, by rule, provides for other reporting periods. The report is due on
9 the 60th day after the last day of the reporting period.

10 (c) All records relating to accountings of trust funds described under par. (b) 3.
11 to 7. and maintained by the department and by the cemetery board are confidential
12 and are not available for inspection or copying under s. 19.35 (1).

13 **SECTION 8.** 440.08 (2) (a) 21m. of the statutes is created to read:

14 440.08 (2) (a) 21m. Cemetery authority, registered: December 15 of each
15 even-numbered year; \$10.

16 **SECTION 9.** 440.91 (1) (a) of the statutes is amended to read:

17 440.91 (1) (a) Any cemetery authority that operates a cemetery that is 5 acres
18 or more in size, that sells 20 or more cemetery lots or mausoleum spaces at a cemetery
19 during a calendar year, or that has \$100,000 or more in preneed trust fund accounts
20 for a cemetery shall apply to the board for a license for that cemetery. A cemetery
21 authority that operates more than one cemetery shall apply for a separate license for
22 each cemetery that is 5 acres or more in size and for each cemetery at which it sells
23 20 or more burial spaces or at which it has \$100,000 or more in preneed trust fund
24 accounts.

25 **SECTION 10.** 440.91 (1) (c) of the statutes is amended to read:

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5-12

BILL**SECTION 10**

1 440.91 (1) (c) 1. The renewal dates and renewal fees for licenses granted under
2 par. (b) are specified in s. 440.08 (2) (a), except that a licensed cemetery authority is
3 not required to renew its license if the cemetery authority sells less than 20 cemetery
4 lots or mausoleum spaces at a cemetery during a calendar year, or that has less than
5 \$100,000 in ~~prereed~~ trust fund accounts for a cemetery.

6 2. A licensed cemetery authority that is not required to renew its license under
7 subd. 1. shall renew the license if, during a period of 2 consecutive calendar years
8 that is subsequent to the period specified in subd. 1., the cemetery authority sells 20
9 or more cemetery lots or mausoleum spaces for a cemetery or has \$100,000 or more
10 in ~~prereed~~ trust fund accounts for a cemetery.

11 **SECTION 11.** 440.91 (1m) of the statutes is created to read:

12 440.91 (1m) (a) Except as provided in sub. (6m), any cemetery authority that
13 operates a cemetery that is less than 5 acres in size, that sells fewer than 20 cemetery
14 lots or mausoleum spaces at a cemetery during a calendar year, or that has less than
15 \$100,000 in trust fund accounts for a cemetery shall register with the board. A
16 cemetery authority that operates more than one cemetery shall submit a separate
17 registration to the board for each cemetery that is less than 5 acres in size, that sells
18 fewer than 20 cemetery lots or mausoleum spaces at a cemetery during a calendar
19 year, or that has less than \$100,000 in trust fund accounts.

20 (b) The board shall register a cemetery authority if all of the following are
21 satisfied:

22 1. The cemetery authority submits an application for registration to the board
23 on a form provided by the board. The application shall require the cemetery
24 authority to provide the names and addresses of the officers of the cemetery

BILL

1 authority and to identify a business representative who is primarily responsible for
2 the cemetery authority's compliance with subch. II of ch. 157 and this subchapter.

3 2. The cemetery authority pays a \$10 fee to the board.

4 (c) The renewal date and renewal fee for a registration granted under par. (b)
5 are specified in s. 440.08 (2).

6 **SECTION 12.** 440.91 (6m) of the statutes is amended to read:

7 440.91 (6m) A cemetery authority of a cemetery organized, maintained and
8 operated by a town, village, city, church, synagogue or mosque, religious, fraternal
9 or benevolent society or incorporated college of a religious order is not required to be
10 licensed under sub. (1) or registered under sub. (1m).

11 **SECTION 13.** 440.92 (2) (a) 4. a. of the statutes is amended to read:

12 440.92 (2) (a) 4. a. At the time that the preneed sales contract is entered into,
13 the preneed seller shall provide the purchaser with the name, address and telephone
14 number of the warehouse and inform the purchaser that the warehouse is approved
15 by the ~~department~~ board.

16 **SECTION 14.** 440.92 (7) of the statutes is amended to read:

17 440.92 (7) APPROVAL OF WAREHOUSES. No person may own or operate a
18 warehouse unless the warehouse is approved by the ~~department~~ board. Upon
19 application, the ~~department~~ board shall approve a warehouse that is located in this
20 state if the person who operates the warehouse is licensed as a public warehouse
21 keeper by the department of agriculture, trade and consumer protection under ch.
22 99, but may not approve a warehouse that is located in this state unless the person
23 is so licensed. The ~~department~~ board shall promulgate rules establishing the
24 requirements for approval of warehouses that are located outside this state. The
25 rules shall require warehouses that are located outside this state to file with the

BILL**SECTION 14**

1 ~~department~~ board a bond furnished by a surety company authorized to do business
2 in this state in an amount that is sufficient to guarantee the delivery of cemetery
3 merchandise to purchasers under preneed sales contracts. The ~~department~~ board
4 shall compile and keep a current list of the names and addresses of all warehouses
5 approved under this subsection and shall make the list available for public
6 inspection during the times specified in s. 230.35 (4) (f).

7

(END)



INS 8-6

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3061/?ins
TKK:.....

LPS: Please check
for extra spaces.

Insert analysis 1

This bill makes a number of changes in the laws governing cemetery associations and cemetery authorities.

Trustees of care funds and preneed trust funds

Insert analysis 2

Reporting requirements

Under current law, a cemetery association must submit certain information about the cemetery association to the department of financial institutions in order to obtain the powers of a corporation. However, a cemetery association that is not required to be licensed by the board (exempt cemetery association) and a cemetery association that is not organized or conducted for pecuniary profit (nonprofit cemetery association) must instead submit the information to the office of the register of deeds of the county in which the cemetery is located. This bill requires a nonprofit cemetery association to submit information about the cemetery association to the department of financial institutions instead of the register of deeds. This bill also requires a cemetery association that is not required to be registered by the cemetery board to submit information about the cemetery association to the office of the register of deeds of the county in which the cemetery is located.

Under current law, a cemetery authority must submit an annual report to DRL. Current law exempts cemetery authorities that are not required to be licensed by the board (exempt cemetery authority) from the reporting requirement. Current law also exempts cemetery authorities that are not organized or conducted for pecuniary

anal: text {
1 profit (nonprofit cemetery authority) from the reporting requirement. This bill
2 eliminates the exemption from the reporting requirement for nonprofit cemetery
3 authorities. The bill creates an exemption from the reporting requirement for a
4 cemetery authority that is not required to be registered with the board. This bill also
5 requires cemetery authorities that are subject to the reporting requirement to
6 submit the report to the board instead of ^{to} ~~the~~ DRL.

7 ☐ ***Deposit and investment of care funds and preneed trust funds***

8 With certain exceptions, current law regulates the deposit, investment, and
9 withdrawal of care funds and preneed trust funds by a cemetery authority. Current
10 law exempts exempt cemetery authorities and nonprofit cemetery authorities from
11 this regulation. This bill eliminates the exemption from regulation for nonprofit
12 cemetery authorities. The bill creates an exemption from regulation for cemetery
13 authorities that are not required to be registered with the board.

14 ☐ ***Sale or encumbrance of cemetery land***

15 **Insert 4-19:**

16 **SECTION 1.** 157.19 (5) (a) of the statutes is amended to read:

17 157.19 (5) (a) This section does not apply to care funds under s. 157.11 (9g) that
18 are deposited with a city or county as provided under s. 157.11 (9g) (a), to care funds
19 of a cemetery for which a certification under s. 157.63 is effective, to preneed trust
20 funds of a cemetery for which a certification under s. 440.92 (9) is effective, or to care
21 funds or preneed trust funds of a cemetery authority that is not required to be
22 licensed under s. 440.91 (1) and that is not organized or conducted for pecuniary
23 profit or registered under s. 440.91 (1m).

History: 1989 a. 307; 1991 a. 74, 269; 1995 a. 336; 2005 a. 25.

24 **Insert 5-12:**

1 ~~SECTION 2.~~ 157.625 (3) of the statutes is amended to read:

2 157.625 (3) Section 157.62 does not apply to a cemetery authority that is not
3 required to be licensed under s. 440.91 (1) ~~and that is not organized or conducted for~~
4 pecuniary profit or registered under s. 440.91 (1m).✓

History: 1991 a. 269; 2005 a. 25.

5 **Insert 8-6:**

6 ~~SECTION 3.~~ 440.92 (10) of the statutes is amended to read:

7 440.92 (10) EXEMPTIONS; CERTAIN NONPROFIT CEMETERIES. This section does not
8 apply to a cemetery authority that is not required to be licensed under s. 440.91 (1)
9 ~~and that is not organized or conducted for pecuniary profit or registered under s.~~
10 440.91 (1m).✓

History: 1989 a. 307; 1991 a. 16, 32, 39, 269; 1993 a. 16; 1995 a. 27 ss. 6605, 9116 (5); 1995 a. 295; 1997 a. 79, 191; 1999 a. 9; 2005 a. 25, 213, 254.

Duerst, Christina

From: Hodgson, Amber
Sent: Monday, October 01, 2007 4:08 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3061/1 Topic: Registration requirements for certain cemeteries

Please Jacket LRB 07-3061/1 for the SENATE.